



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

OCTOBER 28, 2003

PRESENT: Acevedo, Benich, Escobar, Lyle, Mueller, Weston

ABSENT: Engles

LATE: None

STAFF: Planning Manager (PM) Rowe, Senior Engineer (SE) Creer, Business Assistance & Housing Manager (BAHM) Maskell and Minutes Clerk Johnson.

Chair Mueller called the meeting to order at 7:01 P.M.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Mueller opened the public hearing.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

MINUTES:

OCTOBER 14, 2003 COMMISSIONERS ESCOBAR/ACEVEDO MOTIONED TO APPROVE THE OCTOBER 14, 2003 MINUTES, WITH THE FOLLOWING AMENDMENTS:
Page 3, paragraph 4, (modify to read): PM Rowe called attention to Item 2, the Development Agreement, stating that Item 9 beginning on page 3 and continued to page 4 should be deleted because the project does not propose any attached housing.
Page 4, paragraph 9. The blind driveways are *approximately half way between Dunne and Price drive on John Telfer Drive.*
Page 4 paragraph 9: assigned traffic to the extension of John Telfer north of W.

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~~Dunne Avenue~~ from West Dunne west of John Telfer, or John Telfer north of West Dunne, to John Telfer south of West Dunne,” he said

Page 10, paragraph 7 Beginning with a statement of procedure – and order of - for the speakers: those favoring the appeal (appellant), the applicant for the project, and open public hearing time for the general public, Chair Mueller opened the public hearing.

Page 11, paragraph 7: clarified *with the City Attorney* that the City Council....

Page 12 1st paragraph (add): grow *higher*

Page 13 paragraph 2: (add): pesticide *issue*

Page 14 paragraph 4 (motion): **DENY THE FIRST ACTION OF APPEAL**

Page 15, paragraph 5. ~~Planning Commission~~ **TUP**

And next to last sentence: “It provides the opportunity to say ‘why the TUP?’ and why the Planning Commission agrees with the TUP – this is an excellent way to ~~gather information~~. It provides an excellent way to gather information and protect *the environment for species of concern while the EIR is being written and going thorough the approval process.*”

Page 16, paragraph 3 ~~‘give the appearance of attachment’~~, *he did not care if this or isn’t, but that it is important to be clear that it is not attached housing.*

Page 17 bottom of page (modify): *zealous individual or organization will endeavor to REQUIRE Morgan Hill to rigidly adhere to some recommended ‘best practice’.*

Page 18 paragraph 3: ~~answer about the variation or~~, *nice if the General Plan amendment and project scoring timelines ran in parallel.*

THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLES.

OLD BUSINESS:

**1) AP-03-04:
FOOTHILL-
COMMITTEE
FOR GREEN
FOOTHILLS/
SANTA CLARA
VALLEY
AUDUBON
SOCIETY**

Appeal of the Community Development Director’s approval of a Temporary Use Permit to allow operation of a private golf course located at 14830 Foothill Avenue in the O-S, Open Space zoning district.

PM Rowe presented the staff report, noting the matter had been continued by the vote of the Commissioners from the October 14, 2003 meeting with direction to staff to prepare a resolution with proper findings for denial of the appeal. He then presented draft Resolution 03-80, calling attention to Section 1 which provides response to each of the three items raised in the appeal:

- Elimination of fertilization and pesticide application on the entire site.
- Within a two-week period from amendment of the TUP, delineate those areas of the course that can be mowed (restricted to a bare minimum – tees, fairways and greens only) and those that cannot be mowed.
- Specify that any violations of a condition of the TUP or other requirements of permitting agencies would automatically trigger the shutting down of the entire site (no usage, no watering, and no mowing).

PM Rowe called attention to Section 5 of the Resolution, amending that section to read: US Fish and Wildlife Service and the ~~California Department of Fish & Game~~ Santa Clara County Water District*course to provide more time to work with the applicant.* PM

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Rowe also noted a change to Section 3 of the Temporary Use Permit (TUP) [which was targeted by the Planning commission at the October 14, 2003 meeting]: add *During the time period of October 1 – March 31, which is the maintenance period, there is to be reduced frequency of fertilization and mowing.*

PM Rowe also noted that the appellant had asked for a waiver of fees for the appellant and since that is a decision the City Council must make, that request will go before the Council at their November 5, 2003 meeting.

Commissioner Weston asked PM Rowe to specify how many times between October 1 and this evening there has been spraying of pesticides and application of fertilizers? PM Rowe responded that the information would be forthcoming in a report which is required.

Commissioner Weston asked when the EIR will be out? PM Rowe said it will probably be received by the City around November 15.

Chair Mueller opened the public hearing.

Brian Schmidt, 3921 E. Bayshore, Palo Alto, representing the Committee for Green Foothills, said he was also representing the Santa Clara Valley Audubon Society. Mr. Schmidt indicated he was demonstrating objection not only to the project itself, but to the process. He said it is apparent that Planning staff is interested in the *process* issue, as they have suggested 'change in the temper of the permit process'. Mr. Schmidt asked Commissioners to uphold the appeal on the basis of that proposed change.

Commissioner Escobar remarked that the appeal had been in writing with the three issues raised and the Commissioners had heard and dealt with those. Regarding the 'process', Commissioner Escobar said, "I believe the process is in progress and staff will report their advancement in the matter as it proceeds. Consequently, at the present time, this issue is not germane to the item before us."

PM Rowe stated that the City is in the process of updating the Municipal Code and the TUP is part of that process.

With no others present indicating a wish to speak to the matter, the public hearing was closed.

Commissioner Benich commented that as part of the appeal Mr. Schmidt had brought to the Commission, several items had emerged and the applicant had made modifications to the on-going operations.

Commissioner Lyle questioned the absence of Exhibit D to the staff report, which PM Rowe then provided, explaining the boundary outline of annual plant surveys.

Commissioner Weston also questioned (on Exhibit D) the monitoring of water quality by the Regional Water Quality Control Board in relation to (dd), asking the reason for Exhibit D? If any pesticides are present in the creek, could those pesticides be identified? "It seems," Commissioner Weston said, "that with this Resolution and without the reports, we are allowing the application of pesticides three times between October 1, 2003 and March 31, 2004."

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PM Rowe responded that as has been stated in the findings, each representative of the named agencies (U.S. Fish and Wildlife Service, CA Department of Fish and Game, CA Regional Water Quality Control Board Central Coast Region, and the Santa Clara Valley Water District) met with City Planning Staff, then submitted written comments setting forth their respective recommendations for conditions that should be imposed in the issuance of a TUP to avoid adverse impacts to federal and state threatened and endangered species, water quality and other environmental resources. Further, he informed, each of the agencies had indicated an unwillingness/inability to enforce the measures of the TUP until the EIR has been completed. It has been acknowledged, PM Rowe continued, that CEQA is 'out of balance'; the agencies will allow the EIR to address those measures. In the meantime, PM Rowe said, the use of assumptions, based on the report (and testimony) of the applicant regarding the nitrate levels being lower than anticipated, will be considered.

Responding to a question from Commissioner Lyle, PM Rowe said the sampling was completed by an independent laboratory contracted with the City.

COMMISSIONER BENICH OFFERED RESOLUTION NO. 03-80, INCLUDING THE FOLLOWING MODIFICATIONS:

Section 5 of the Resolution, (amended): ~~US Fish and Wildlife Service and the California Department of Fish & Game Santa Clara County Water District~~*course to provide more time to work with the applicant.* **Section 3 of the Temporary Use Permit (TUP):** add *During the time period of October 1 – March 31, which is the maintenance period, there is to be reduced frequency of fertilization and mowing.*

DENYING APPEAL APPLICATION, AP-03-04: FOOTHILL – SANTA CLARA VALLEY AUDUBON SOCIETY AND COMMITTEE FOR GREEN FOOTHILLS. THE MOTION CARRIED BY THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE; ABSENT: ENGLES.

NEW BUSINESS:

Agenda item 3 was taken up at this time due to the large number of audience present for the hearing. Commissioner Benich was excused for the item, due to potential conflict of interest, as his residence is located within 500 feet of the subject property.

3) UPA-99-02: CALLE ENRIQUE- GUEVARA

A request to amend a use permit for a infant/toddler childcare center to allow childcare for children up to the age of 12 in a 2,600 sq. ft. building located at 15345 Calle Enrique located in the CO, Administrative Office zoning district.

PM Rowe commenced with the staff report, noting that the conditional use permit approval was granted by the Planning Commission to Noah's Ark Preschool and Daycare to allow the operation of an infant toddler preschool and daycare to accommodate 50 children. The original approval allowed the Center to care for children up to age three. That Center operated from January 2001 to August 2002. The current applicant is seeking to reopen the Center and amend the use permit to allow childcare for children up to age 12. PM Rowe stated that several of the original conditions had been cause for concern, one of the most notable being the landscaping which is now badly deteriorated. The

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applicant proposes to plant trees and upgrade other areas of the landscaping, as it is anticipated the children will spend time outside. He also said that there has been no indication of difficulty during the previous operation with traffic issues. The previous operators did make provision for parking and drop-off points for the children with the installation of a circular drive. However, PM Rowe continued, several complaints – and those accelerated – were received regarding the increasing noise levels. Now with older children being requested as potential clients, that issue should be revisited, PM Rowe explained. Perhaps, he suggested, older children might alleviate the noise problems and the younger children could spend less time outside.

Commissioner Escobar asked how many childcare facilities are operating in the general area? PM Rowe said the staff has not determined that number and perhaps the applicant would address that issue.

Chair Mueller described complete evacuation plans required in the past for such facilities.

Chair Mueller reminded the commission and audience that the change in age limit was the adgendized item not revoking the permit. PM Rowe responded that the Commissioners could make further modifications beyond those recommended by staff, but reminded (in response to a question from Commissioner Acevedo) that revocation of the permit was not an result under consideration at this time’

Commissioners raised several issues including:

- Space requirements for different ages of children
- Possible modification of the use permit

Tamara L. Avilla, 1764 Brentwood Ct., Hollister, said she is the director of a daycare which is currently closing at the present location. “I’m trying to expedite the process so that the child care needed can be provided on a continuing basis,” Mrs. Avilla declared. She also indicated she is willing to work on the landscaping, including planting sizable trees to help mask the noise. As to the number of children to be active at the school, Ms. Avilla said she would like to amend the numbers that are now effective on the permit from the City and would like to have approval for:

12 infants

12 two-year olds

12 three-year olds

12 four years and up

with the flexibility for two other children in the school-age group

She stressed the benefit of the preschool age group placement to the City, saying this is a great need for Morgan Hill. Ms. Avilla told Commissioners that the school-age group begins with kindergarten age and that by state law children must have their fifth birthday by December 1 to begin that program.

Commissioner Lyle asked if the plan presented was replacing the current school? Ms. Avilla responded that to be the case, and noting that the current location she directs is closing because the owners of the property have other plans.

Commissioner Lyle also asked about the space requirements for the school. Ms. Avilla said that the space requirements are governed by Title 22 and she would be happy to provide sections as applicable. Ms. Avilla also said there is conflict between what the City

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license indicates and the Community Care licensing permits. She also explained that all 50 of the children would not be present at one time, but the times would be staggered with after school care provided.

Commissioner Escobar indicated that the main issue is that of noise. He reiterated the numbers provided by Ms. Avilla's testimony, asking if infant care was not more of a demand? Ms. Avilla said that 50 infants would not be the demand, but the preschool age childcare is. Commissioner Escobar asked about other care centers in the neighborhood, which Ms. Avilla acknowledged.

Commissioner Weston asked about the current (physical) arrangement for childcare and why that location is no longer viable? Ms. Avilla said that she has been told the owners of the business are closing it for financial reasons and they do not own the property.

Chair Mueller asked about the current use permit which is limited to children up to three years old. Ms. Avilla said those toddlers would be transferred to the preschool program when the age limit is reached.

Ms. Avilla then initiated dialogue on the infant care, noting that time outside is supervised, but with infants, toddlers and preschool children, there is a level of noise that can be accelerated. If any of the children are stressed or experiencing difficulty, those individuals can be taken inside.

Commissioner Lyle asked how many older children would be present later in the day (following dismissal from school)? Ms. Avilla replied that she has applied for 14 slots for that age group, but wants no more than 12.

Commissioner Acevedo asked if the applicant currently works for Noah's Ark Preschool and Daycare? Ms. Avilla responded affirmatively, noting that the reason she is trying to expedite this request is so that the 'family' stays together. Ms. Avilla also noted, responding to Commissioner Acevedo, that she did not want to be limited to children under three years old, as some of her clients had been with her since not long after the birth of their children and were now getting older; that, she said, is the reason for the request to take older children.

Tammy Ward, 17711 Lancia Dr., spoke in favor of the request, noting that the operation has been good, and good for the City. She said that the children who live in the neighborhood may cause more noise than those at the daycare. Ms. Ward said the care is excellent and more reasonably priced (\$1080/month) than others in the area. Ms. Ward answered Commissioner Escobar's question by indicating that she lives about 1.5 miles from the facility.

Mindi Eldridge, 13720 Llagas Ave., said the concern is more than just dollars, it is the trust the children have in the staff, which Ms. Eldridge termed 'excellent', saying the staff are like parents to her children.

Debbie Gallagher, PO Box 101, San Martin, said her children are very attached to the teachers, indicating she finds the preschool an 'advanced study' getting the students ready for kindergarten. "It's a stable environment, cost effective, and a good academic foundation," she said.

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Ed Rado, 496 Via Sorrento, told Commissioners he lives behind the daycare and was at the Commission hearings for the original permit and indicated concerns about the noise at that time. During the intervening time, he said, that noise level has continually accelerated, and it became so overwhelming that a call was placed to Social Services. Of particular concern regarding this item, Mr. Rado said, is that the applicant was the original director of the daycare. "This is a bad area for the daycare location," Mr. Rado said. "Now if the age level is raised, what will the kids do? There appears to be a lack of playground equipment, particularly for the older students. The first day care business didn't work, there have been many calls to the Planning Department and Social Services", as he declared that he was opposed to this proposal. Mr. Rado further stated that the neighbors with businesses in the area had not received notification of the hearing this evening. PM Rowe said he would look into that issue.

Commissioner Escobar asked Mr. Rado about his home occupation. Mr. Rado explained that he works at home on occasion, but his wife's employment is from their house. Mr. Rado added that the original license stated that there would be no children present after 6:00 p.m., but that didn't happen and consequently, there was 'noise all day'.

Carole Rado, 496 Via Sorrento, said her backyard is adjacent to the property where the daycare is located. "I wonder about the uses of the property," she said. "First it was said it was daycare and now a nursery school (preschool) is proposed. Many of the concerns cannot be mitigated: noise is paramount along with traffic issues." Mrs. Rado explained that when the prior operation was first in business, she had worked in Silicon Valley, but with changes in her employment responsibilities, she now worked from her home and needed phone access around the world. "During the daycare operation, it is impossible to open the windows because of the noise," she said. Mrs. Rado went on to explain that the properties have 'short backyards' and this creates even more problems. She spoke of the investigation conducted by Social Services, noting this applicant was the director at that time. "The noise issue is not just the children screaming," Mrs. Rado explained, "but also that of the workers yelling at the children." Concluding, Mrs. Rado said, "Such noise has a cost for the Director and the homeowners."

Commissioner Weston asked Mrs. Rado if she had been living there before the first preschool (daycare)? Mrs. Rado responded yes, and indicated on the map the site of her house and yard.

Nancy Benich, 498 Via Sorrento, said she lives right behind the daycare and voiced concern about the quality of care. Mrs. Benich cited the previous experiences with the school and the direction, which she described as 'not pleasant'. Mrs. Benich, telling Commissioners that she is a schoolteacher and loves children, ended by asking Commissioners to vote to not allow the expansion nor grant the request because of the difficulties with the small space and the noise levels.

Janet Fruit, 500 Via Sorrento, reported that she is a teacher and was not opposed to the original request for the daycare business. However, first came the noise issues then the traffic issues, she informed. At one time, Mrs. Fruit said, during a vacation from her school, she became concerned about the noise of one of the children who appeared to be experiencing real distress. "I went outside and spoke with the Director (current applicant) asking her to take the child inside to calm him. The Director told me she was 'short

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staffed' and that child's noise continued for a long time. I didn't hear another adult being called for back up support."

Commissioner Weston asked if the noise of the children could be heard coming from inside the building? Mrs. Fruit replied she believed what she heard was from the play area in the back of the building.

Commissioner Lyle questioned Mrs. Fruit's belief regarding the impact of a larger group and different age level of students. Mrs. Fruit said she is less concerned about the children than about the person in charge, citing again her initial encounter with the applicant.

Commissioner Escobar inquired about the prospect of having 50 children present, asking if all the children had previously been outside at one time? Mrs. Fruit said she thought there were probably about 12 children outside when she contacted the Director.

Responding to Commissioner Lyle's query about traffic, Mrs. Fruit said that the driveway installation had been a 'good thing', but not all traffic problems have been solved.

James Fruit, 500 Via Sorrento, explained that his dwelling is approximately 75-feet from the back wall of the facility and that the noise is 'magnified'. Because of the size and location of the buildings, he said, there is not much way to get relief from the noise. Mr. Fruit said that many of the neighbors – and he, too – work from their homes, saying that in the summer it is impossible to have their windows open because of the noise from the school. "If this request is approved," Mr. Fruit said, "we want more strict controls," suggesting that if the noise levels become severe, other mitigations be put into place, or recession of the permit be ensured.

Chair Mueller asked if the noise is constant or if heard at specific times? Mr. Fruit said that the children seemed to be outside constantly, with 'some kind of rotation'.

Michelle Aitken, 18535 Old Monterey Rd., said that she is aghast to think that the children are not being well cared for. "I've used other schools, but really like this one. My child is happy. I'm happy that the toddlers can express themselves with noise," Ms. Aitken exclaimed. "This is a great school. I've tried others, not just for the money, but I keep coming back because of the warm, loving environment. The kids love it."

Denise Varela, 15685 LaBella Ct., Gilroy. said she is a new mother and believes the Director is great. My concern is that I live in Gilroy, but bring my child here because of the great care, and don't want to give it up.

Rob Snow, 1740, Llagas Rd., said he is appalled that the speakers would attack the Director, whom he described as 'great'. "I thought the issue was what happens to the kids now that the business is closing," Mr. Snow said. "We need daycare; where do we get it now? Other schools I've seen have personnel turnover, but this is stable. Sure, the kids make noise. Kids are kids! We need the school." Commissioner Acevedo asked Mr. Snow the ages of his children? They are six and 10 years.

Tammy Ward spoke again, saying she resents the attacks on the Director, and reiterating the 'wonderful care' given to the children.

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Chair Mueller raised two issues during the public hearing: 1) where the notification to the neighboring business may have been sent? PM Rowe said that legal hearing notices are sent to property owners and if businesses are leased, the property owners may not have forwarded them to those individuals; 2) if the preschool activity is a valid use for a permit at this location [yes]. Chair Mueller asked PM Rowe to specifically look into these issues.

With no other persons present to address the matter, Chair Mueller closed the public hearing.

Commissioner Weston pondered the current operations and the complaints regarding the current applicant.

Commissioner Acevedo asked if other preschools in the area had instigated similar noise complaints? PM Rowe said he could not recall off hand, but the operation at this location has experienced considerable complaints. Commissioner Acevedo said he was just trying to compare this with others in the area *in a similar area, that being a daycare/preschool adjacent to residential properties.*

Commissioner Weston said it is possible that because of the large buildings (two-story houses) that the noise levels are exaggerated.

Commissioner Escobar asked about the investigation conducted by Social Services, wondering how Social Services got the initial information? It was explained by the applicant that the neighbors provided the data which resulted in the investigation in 2001. Ms. Avilla also informed that Social Services personnel told her this was the only complaint received regarding the operations at the facility, although she was aware that the Planning Department had received complaints regarding the noise.

Commissioner Lyle asked PM Rowe if there is a reasonable mitigation for sound at the location, indicating that the applicant has said she intends placing trees, while noting that they 'would have to be awfully large trees'. PM Rowe responded, "No, not really. These are two-story houses and the sound rises and magnifies. Not even an eight-foot fence would make much difference."

Commissioner Weston avowed his belief that a fence around the play area would not be a total solution because such installation would tend to limit the amount of light into the area, as well as possibly reducing the line-of-sight for students being observed by the teachers.

Commissioner Acevedo referenced the existing use permit, saying it does exist and the current question is whether to allow older children? "We should be focusing on the request for 'aging up'," he said. Commissioner Acevedo also noted that the permit for the facility at this location hasn't been active for over a year, and asked if there is a time limit for such a permit? PM Rowe responded that the limit is for the use to begin, but the permit does not automatically cease if it is inactive. "So the permit could stay with this property indefinitely," Commissioner Acevedo observed.

Chair Mueller agreed that the spotlight should be on the age change and if the change is agreed by the Commissioners, there should be a 'tightening' on observation of the children making noise. "Staffing levels must be such to care for the children and maintain

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order,” Chair Mueller declared. He continued that it might be well to consider not having so many younger children and allowing children limited time outside, making sure those times were specified.

Commissioner Escobar agreed, saying the preschool must be structured; there needs to be a schedule of times the infants will be outside; and a possible modification of policy that children are outside all day.

Chair Mueller said the hours of operation is part of the use permit and the Commissioners may need to have those hours tighter in terms of the operation.

Commissioner Acevedo cited Title 22 as he wondered if the children must be outside some particular time, e.g., so many minutes per hours of operation?

Commissioner Lyle said he wondered if the findings presented for consideration are sufficient for the ages intended. “It’s not clear what the 10 – 12 year olds will be doing in the back yard,” he said. “I’m concerned that more space may be needed for that age group. We want to make certain that no children will be admitted to the operation who are more than 12 years old.”

Commissioner Escobar expressed a conviction that infant care is badly needed for residents of the area.

Commissioners embarked on discussion regarding the number of children in the age groupings described by the applicant. Commissioner Lyle reiterated concern about the space for that number of children and sought clarification regarding the ‘school age’ youth entrance requirement. PM Rowe read from the staff report, indicating a child must attain their fifth birthday before December 1 of the calendar year.

Chair Mueller conducted a ‘straw vote’ to ascertain the wishes of the Commissioners present for increasing the number of school age children in the request. Commissioners Acevedo and Escobar favored a larger number (up to 18); Commissioners Weston, Lyle, and Mueller wished to keep the number no greater than 12.

Commissioner Acevedo discerned that most kindergartners attend a ‘split day’ so there would probably be fewer children present in that age group and the older students would not arrive until dismissal from school.

Chair Mueller again reiterated that staffing is needed to be at the level so that if a child is upset s/he can be taken inside without further disruption to the operations or the neighborhood residents. That would provide some measure of mitigation for the noise, he said. Chair Mueller restated the discussion regarding limiting children eligible for kindergarten/school age. It was ascertained that if a child(ren) celebrated a birthday causing a ‘bump up’ in the next age group for the permit, adjustment of enrollment must be achieved.

COMMISSIONER WESTON OFFERED RESOLUTION NO. 03-83 WITH THE FOLLOWING MODIFICATIONS:

staffing levels must be maintained so that if a child is upset s/he can be taken inside without further disruption to the operations or the neighborhood residents

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enrollment is limited to children eligible for kindergarten/school age for that category (*and the number of children in this category is limited to 12*)

if a child(ren) celebrated a birthday causing a 'bump up' in the next age group for the permit, adjustment of enrollment must be achieved

a review of the operations of this facility will be issued as a staff report within one year of business

an evacuation plan will be prepared and forwarded to the Planning Department

APPROVING AN AMENDMENT OF AN EXISTING USE PERMIT TO ALLOW DAYCARE AND PRESCHOOL FOR CHILDREN UP TO THE AGE OF TWELVE (12) AT 153 CALLE ENRIQUE LOCATED IN CO, ADMINISTRATIVE OFFICE ZONING DISTRICT. THE MOTION WAS SECONDED BY COMMISSIONER ESCOBAR.

Commissioner Escobar re-examined the issues of the number of students beginning school age to age 12. He also discussed with the Commissioners the remedies required for violation(s) of the permit.

THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ESCOBAR, LYLE, MUELLER, WESTON; NOES: ACEVEDO (who indicated his belief that there should be greater flexibility on the age groupings of the children); ABSTAIN: NONE; ABSENT: BENICH, ENGLES.

Commissioner Benich returned at 8:48 p.m.

The regular order of the agenda was resumed at this time with the commencement of agenda item 2.

2) ZA-03-10/ SD-03-08 /DA-03-06: WATSONVILLE-SOUTH COUNTY HOUSING

A request to approve a precise development plan, development agreement and subdivision of a one acre parcel located on the north west corner of the intersection of Watsonville Rd. and Calle Sueno, in the R-2, 3,500 zoning district. The proposed precise development plan and subdivision would allow for 12 single family attached dwelling units.

PM Rowe presented the staff report indicating the applicant is requesting to revise the underlying zoning to contain a precise development plan for the 12-unit multi-family project containing twelve two-story, single-family affixed buildings ranging in size from 1,249 square feet to 1,469 square feet, with each unit having a two-car garage reachable from an interior private vehicle passageway. PM Rowe said that the purpose of the RPD overlay district is to permit and encourage flexibility of site planning with appropriate safeguards and controls for residential development by allowing variations from the base zoning standards. These variations, he explained, are all owed when in the opinion of the Planning Commission – and with the approval of the City Council – the proposed development will boost the area in which it is proposed by exceptional design, and the arrangement of buildings, provision of open space and landscaping the protection of the welfare and privacy of adjoining property or the construction and reservation of housing units for lower income or senior households. PM Rowe asked Commissioners to focus attention on page 3 of the staff report, number 8 (Section 18.14.060H – Municipal Code) dealing with setbacks and the fact that lots 6, 7, and 11 do meet these corner side yard requirements. Calling attention to Exhibit A of Resolution No. 03-86 [page 3, item 8

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(modification of ~~vernacular~~ *language*); and page 7, item 14 (l) (inclusion of terminology)], PM Rowe reiterated the revisions to this section and noted that concessions may be granted to the development standards for affordable housing. He further informed that such provisional concessions have been granted to other developments in the City. Continuing, PM Rowe noted that the purchasing hierarchy is set as: teachers, policemen, other public employees, teachers from districts other than Morgan Hill, other employees of other school districts, and other employees of other school districts.

Commissioner Benich referenced the private drive off Watsonville Road into and through the development, asking who is responsible for the maintenance? That would be the liability of the Homeowners Association, PM Rowe said.

Commissioner Acevedo conveyed concern that preference was given toward teachers and police when the need for medical staff (particularly nursing personnel) was well documented, yet not identified for this affordable housing. ***My main point, he explained, is that the nursing profession was previously documented as needing affordable housing, but was not identified here.***

Chair Mueller questioned the parking standards for meeting the requirements set by the City for single-family homes. PM Rowe explained the parking requirements for the project. Chair Mueller commented that meeting those standards would require 51 parking spaces, yet only 28 are indicated for the project. Discussion ensued regarding the use of driveway aprons and requirements for resident and guest parking spaces obligations. PM Rowe informed that the City Attorney has been consulted with respect to the use of driveway aprons and explained the parking patterns therein.

Chair Mueller said the turn around at the end of the drive aisle does not meet the Fire Department requirements. "How to do this (meet the requirements) is the question," he said.

BAHM Maskell of the Morgan Hill Business Assistance and Housing Department, explained the placement ranking for preference of purchase of the units.

Commissioner Weston asked BAHM Maskell about the resell procedures for the units. BAHM Maskell explained that teachers who purchased can come back to the City and request the listing of eligible buyers for the units. Commissioner Weston articulated concern that there is a lack of capital appreciation for the teachers who purchase such units. BAHM Maskell said the City – and she – liked the BMR concept, as purchasers could enjoy the benefits of home ownership, particularly, stable payments and tax exclusion.

Commissioners raised several points with BAHM Maskell, including:
preferences to purchasers list
sales price (some are moderate income units - and the wording regarding these units needs to be changed)
the units are for 60% - 120% of Santa Clara County's median income residents

Chair Mueller opened the public hearing.

Jan Lindenthal, 9015 Murray Ave., Suite 100, Gilroy, represented South County Housing

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when speaking with the Commissioners, as she said that the plan formulated and presented tonight was taken from input from teachers and study of the neighborhood, followed by extensive review with the Planning and Public Works staff. "What we are trying to do is match this design with successful others," she rationalized. "There is not a lot of detached, moderate income housing we work with. This property and the directives from the City Council require a creative approach. I think this is a good project to indicate how City code does not lend to higher density housing. The targeted income purchaser for these units will be teachers in the Morgan Hill Unified School District, with incomes ranging from \$35,000 to \$70,000 per year. One goal of the project is the provision of purchase ability to single teachers. Four of the houses will sell for \$125,000 - \$140,000, with the income requirement being \$30,000 to \$50,000. Four of the houses will sell for \$290,000 - \$310,000 with the income requirement being \$67,000 to \$86,000. Four of the houses will emphasize 120% of the median and sell for \$390,000 - \$410,000, with income requirements being \$85,000 - \$102,000." Ms. Lindenthal went on explain that the restriction set by state development funding sources is very complicated and bears further discussion regarding homeownership for teachers.

Commissioner Weston asked for explanation about what the financial arrangements for the properties were dictated by, e.g., how many units per income level? Ms. Lindenthal said the basic was affordable by entry level teachers, and there needs to be a certain number of moderate income sales units for economic balance.

Chair Mueller reminded that other open market *moderate* units can compete for some like (similar) units and those in the open market competition are generally larger with more amenities in the developments.

Ms. Lindenthal gave comparisons of prices with other units being constructed and/or planned by South County Housing. She spoke on the requirements for non-striction of professions for houses being planned. Target marketing is successful for this type of housing, Ms. Lindenthal reported.

Jim Yee, 2671 Crow Canyon Rd., San Ramon, is the Architect for the project. Mr. Yee talked about the design features, both the site and housing patterns. "We have tried to conceal the cars with garage parking controlled from drive aisles to improve the sense of community in a small space," he said. Noting the concern the Commissioners displayed about the lot sizes, Mr. Yee explained the plan for clustering the lots and minimizing the lot lines. He also called attention to the setbacks, noting that there is 31-feet between the drive aisles; at the bedrooms there are 40 – 45-feet between the housing's bedrooms (different dwellings). Mr. Yee said that because the homes located here are designed smaller, there is greater consistency with the older surrounding neighborhoods. And these being two-story, he said, gives the advantage of being built to the near edge of the lots. Mr. Yee then turned to the streetscape features at the back of the units, noting that the front yards buffer to the streets and provide common areas. "We tried to make sure the common areas are very usable," Mr. Yee proclaimed. "Furthermore, through a variety of uses of arches and porches, the elevations of the homes have distinction." Mr. Yee said that the Fire Department access and how to provide access for emergency equipment and personnel had been addressed by the Design Review group for the City and those individuals had no quarrel with the 'stand pipe' indicated in the plan.

Chair Mueller said he thinks the end of the drive aisle must have a 36-foot ~~radius~~ *radius*

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for fire apparatus turnaround. Attention was pointed to Standard Condition #16 on page 16 whereby it appears that the Fire Marshal can give written permission for variation to this requirement. Mr. Yee said that is the basis of the rationale for the 'stand pipe'. Discussion ensued regarding approval by the Fire Department and whether that approval was for Site Plan 1 or 2. Ms. Lindenthal clarified it was for Site Plan 1, telling Commissioners that South County Housing has a copy of the Design Review Committee discussion obtained from Staff to that committee, whereby it was identified that the Fire Department required the 'stand pipe' for Site Plan 1.

Commissioner Weston asked how far the project is located from the downtown core area? Mr. Yee explained the distance, emphasizing this project has a rural setting and is designed to act as a transitional area, likening the development to a 'courtyard'.

Commissioner Benich asked how the Architect had arrived at six duplexes instead of five, noting that five would have necessitated fewer variances. Mr. ~~Yes~~ Yee responded that six provided more efficiencies, adding that a 'planning trick' is to exhibit cohesiveness through core development, which also enhances the security elements.

Commissioner Acevedo informed that he had been present at the City Council's discussion of this project and it had been clear that the Council requested certain density on this site.

Chair Mueller recalled that the Council members had agreed to the concept presented, but were not enlightened as to the variances required. "There are code violations all over the place in this design," Chair Mueller asserted, "and those were not told to the Council." Mr. Yee protested that the concepts had been fully presented to the Council.

BAHM Maskell interjected that she feels confident that City personnel and project developer have followed the direction of the City Council and all have tried to accomplish what the City Council members wanted. "I think the project does that," she affirmed. BAHM Maskell further stated that the applicant has tried to come up with a most feasible plan to meet the directives of the Council. She reminded that a deviation from the Code is possible, and repeated this plan is based on the course set by the Council.

Chair Mueller opened the public hearing.

Michael Donnelly, 15355 Calle Sueno, asked that, when the City Council gave direction for this plan, was it indicated that the density would be similar to the adjacent property? [Yes] Mr. Donnelly presented figures of a conducted study indicating that the adjacent property has 8.42 per acre while this project would reveal 12.82 units per acre. Chair Mueller said the numbers Mr. Donnelly presented were 'pretty close'. Mr. Donnelly said the neighborhood has concern regarding the density; "We – and the City Council – were told the density would be comparable; we do not believe that."

Ramana Devaraj, 255 Via Naretto, expressed dismay that there were only four of the 24 residents of the existing subdivision/development represented at the meeting. "I'm afraid that the rest have just given up," Ms. Devaraj lamented. "Our concern is the density." Ms. Devaraj asked that the numbers of the project housing be reduced. "Please be sensible. Help fix the problems of the fire hydrants and parking," she asked.

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Keith Gangitano, 270 Via Naretto, expressed great respect for all the staff who have worked on the project. "However, I think there are City Council members who are 'getting a feather in their hats' by supporting this project," Mr. Gangitano stressed. He pointed out that Commissioner Engles had suggested the problem(s) associated with housing finance for public employees could be solved through 'silent seconds'. This (proposed) housing is not being built for families, he declared, "It is just too small, and Watsonville Road presents high volume and high speed traffic," urging Commissioners to rebuff the request before them.

Stacey Thornburg, Via Naretto, told Commissioners she agreed with the other speakers' concerns: traffic, location, density, and indicating that safety is her biggest apprehension. Ms. Thornburg spoke of the 'dangerous traffic pattern/flow, adding that parking at the corner of Calle Enrique and Watsonville Road is of distress at present and can only be intensified if the project is permitted. "Furthermore," Ms. Thornburg said, "the residents in the area had been led to believe this property would be used for either a fire station or a park." Chair Mueller interjected that the property was dedicated to the City for a fire station, but not indicated for a park, at least not by any City officials. Ms. Thornburg continued by asking what had happened to a preference plan for affordable housing to be offered to 1) police 2) teachers and 3) firefighters? She expressed concern that the plan presented did not give consideration to firefighters. Chair Mueller reminded that police have been placed high on the priority list.

With no others present indicating a desire to speak to the matter, Chair Mueller closed the public hearing.

Commissioner Lyle asked SE Creer what the City's experience has been with small units (developments) having private streets? SE Creer responded that the Homeowners Associations have the ability to maintain the streets. Continuing, Commissioner Lyle asked about parking on Calle Sueno? SE Creer said there are issues for restrictions at that location. As to Watsonville Road, SE Creer explained the width of the road at the corner with subsequent narrowing beyond the corner. Regarding that narrowing, SE Creer spoke on the efforts of the owner to reach agreement with the 13 neighboring properties for right-of-way acquisition, but had been unsuccessful.

Chair Mueller persisted in expressing concern about the need for turnaround at the end of the drive aisle. SE Creer said the Fire Department has accepted the plan as is.

Commissioner Acevedo provided some history of the matter saying that at the rezoning, it had been specified the density should match that of adjacent properties. However, the City Council had opted for high density. "The Planning Commission said same density, the City Council said higher density, so the density ended up 12 units per acre instead of seven units per acre."

Commissioner Lyle contended, "Everyone recognizes the need for this type of development. There is also a need for facilitation such as code changes to make developments happen. If there are 12 units per acre, this (the presented) may be the best design. However, I believe this is too many units on the site. Furthermore, I believe the 'envelope has been more than pushed; it has been 'burned up'."

Commissioner Benich stated he was startled by the density and agreed with Commissioner

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Lyle. "There are just too many units for the space," he emphasized.

Chair Mueller asked the representatives of South County Housing if they are prepared to get insurance for the attached units. Ms. Lindenthal responded that they were purchasing a 'wrap' policy – and it is very expensive.

COMMISSIONER ESCOBAR OFFERED RESOLUTION 03-84, RECOMMENDING APPROVAL OF A ZONING AMENDMENT FROM R-2 3,500 TO CITY OF MORGAN HILL RESIDENTIAL R-2, 3,500/RPD RESIDENTIAL PLANNED DEVELOPMENT OVERLAY AND A PRECISE DEVELOPMENT PLAN FOR A ONE-ACRE PARCEL LOCATED ON THE NORTHWEST CORNER OF WATSONVILLE RD. AND CALLE SUENO. THE MOTION WAS SECONDED BY COMMISSIONER ACEVEDO.

Commissioner Acevedo made it known that he is not against the people in the area, nor against the residents who spoke at this meeting, but believes the City Council is committed to the project as presented this night.

Chair Mueller said he is 'torn' believing there are too many units for the site, but *convinced we need to supply teacher/policeman housing*. He continued that parking is of real concern and indicated thinking that the common area is poorly placed. "But my main concern is that a real disaster could trap people inside the development *open space area* – and that safety issue causes me to oppose the design."

Commissioner Escobar said the bottom line is that the City has identified the need for affordable housing at this location. "There is a known need for creativity of design in projects such as this," Commissioner Escobar said. "I ask my fellow Commissioners for a favorable vote on the motion."

Commissioner Weston (to Commissioner Escobar): "What about the project is appealing?" Commissioner Escobar responded that decisions regarding housing are not made in a vacuum. We need to provide housing to attract and retain teachers who tend to make less money, but contribute much to the quality of life for a community."

Commissioner Weston (to all Commissioners): "What do you think about four of the units (in this plan) competing for allocations in Measure P against open market developments? Personally, I like the Redevelopment Agency. It meets societal needs, but in this case, it seems the Redevelopment Agency is trying to make money."

Commissioner Lyle expressed the thought that in order to do a project like this, the City should be proactive in having codes that meet the needs. "We need consideration first of the code requirements and possible changes. I have a real problem with the numbers and amounts of deviation needed for meeting this plan. I would like to have seen the process reversed (code changes first)."

**THE MOTION DID NOT PASS (FAILED) BY THE FOLLOWING VOTE:
AYES: ACEVEDO, ESCOBAR, MUELLER; NOES: BENICH, LYLE, WESTON;
ABSTAIN: NONE; ABSENT: ENGLES. CONSEQUENTLY THE MATTER IS
REFERRED TO THE CITY COUNCIL WITH NO RECOMMENDATION.**

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Chair Mueller said the issue is the number of units and the density of that number on the amount of land.

Commissioner Benich said his wife is a teacher and he is definitely in favor of helping provide housing for teachers, 'but not like this'.

COMMISSIONER ESCOBAR OFFERED RESOLUTION 03-85, INCLUSIVE OF THE FOLLOWING MODIFICATIONS:

Standard conditions:

Page 7 H2 amending the language to achieve consistency with the regular agreement and guidelines of the development agreement

Page 4 C 3 and 4

APPROVING A 12-LOT SUBDIVISION ON A 1 ACRE SITE, LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF WATSONVILLE RD. AND CALLE SUENO. COMMISSIONER ACEVEDO SECONDED THE MOTION. THE MOTION FAILED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, ESCOBAR, MUELLER; NOES: BENICH, LYLE, WESTON; ABSTAIN: NONE; ABSENT: ENGLES. AS A RESULT, THE MATTER IS REFERRED TO THE CITY COUNCIL WITH NO RECOMMENDATION.

Considering Resolution No. 03-86 with revisions as provided [page 3 #8 and page 7 H(1)] Commissioner Acevedo said he strongly disagrees with the hierarchy presented for priority of housing. "I don't want to see non Morgan Hill people considered before Morgan Hill people, *specifically those employed outside Morgan Hill*" he announced. Other Commissioners concurred with this view.

COMMISSIONER ESCOBAR OFFERED RESOLUTION NO. 03-86, RECOMMENDING APPROVAL OF RESIDENTIAL DEVELOPMENT AGREEMENT, DA-03-06 FOR MP-02-26: WATSONVILLE-SOUTH COUNTY HOUSING. COMMISSIONER ACEVEDO SECONDED THE MOTION, WHICH DID NOT PASS DUE TO THE FOLLOWING VOTE: AYES: ACEVEDO, ESCOBAR, MUELLER; NOES: BENICH, LYLE, WESTON; ABSTAIN: NONE; ABSENT: ENGLES. THEREFORE, THE MATTER IS REFERRED TO THE CITY COUNCIL WITH NO RECOMMENDATION.

OTHER BUSINESS:

4) RDCS QUARTERLY REPORT

PM Rowe gave the staff report saying that more projects have fallen behind schedule, and indicating the belief this is just part of the 'general economic slowdown'. He said all those with projects behind schedule have been notified and they are taking action with some pulling of permits. PM Rowe called attention to page 6 of the report telling Commissioners that Mission Ranch is ahead of schedule in pulling permits by making application before June 30, 2003. On page 12, the # of building permits pulled was corrected ~~384~~ 379.

Chair Mueller said the number of units finalized is the data sent to the State and there have been approximately 287 so far this year, which is what the report to the State will reflect.

PM Rowe explained the process of how the count verification is done.

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COMMISSIONERS LYLE/ESCOBAR MOTIONED TO ACCEPT THE REPORT AS AMENDED. THE MOTION PASSED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT, WITH ENGLES ABSENT.

5) MULTI-FAMILY VACANCY RATE REPORT

Bi-annual review of apartment vacancy rate as required in accordance to the Morgan Hill Municipal Code, Chapter 17.36.

PM Rowe presented the bi-annual vacancy survey, stating that the most recent multi-family housing estimates from the State Department of Finance indicates a total of 1,754 multi-family units. The survey results, he said, account for over 50% of all such units, with senior housing units not being included in the sampling.

COMMISSIONERS LYLE/ESCOBAR MOTIONED TO ACCEPT THE SURVEY RESULTS ESTABLISHING THE VACANCY RATE FOR OCTOBER 2003 AT 4%. THE MOTION PASSED WITH THE AFFIRMATIVE VOTE OF ALL COMMISSIONERS PRESENT, WITH ENGLES ABSENT.

6) APPROVAL OF MEASURE P COMPETITION SCHEDULE

Proposed schedule for processing applications for the upcoming Affordable, Micro and Small Project Measure P Competitions.

PM Rowe presented the schedule and reported it is similar to that of last year.

Commissioner Lyle suggested the schedule might be 'tightened up a bit', noting that some items depend on the Measure P update passage.

PM Rowe said there is a need for the subcommittee for Measure P potential changes to be named soon to start consideration of changes for the upcoming competition.

Regarding the schedule, Chair Mueller said there is a need to indicate when the developers meet with staff to clarify issues. Others noted the meeting is scheduled for January 12, 2004. Chair Mueller asked PM Rowe to insert language making sure that this meeting is emphasized to the developers. PM Rowe said when the letters are sent out, that will be accomplished.

Commissioner Weston commented that he wishes some change could be made in the process, as it seems the Planning Commissioners are all too often called on to be referees between the developers and staff.

Chair Mueller said it would be beneficial for individual Commissioners to sit in on the Design Review scoring sessions.

Commissioner Lyle said it would probably be beneficial to move some of the dates:

3-9-04 ← 2-27-04

5-11-04 ← to be determined

PM Rowe estimates there will be about eight applications for this category (Affordable, Micro and Small Project Measure P Competitions).

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CHAIR MUELLER DIRECTED STAFF TO MAKE ADJUSTMENTS IN THE SCHEDULE AS NEEDED AND PROVIDE THE REVISED SCHEDULE TO THE COMMISSIONERS AND THE PUBLIC, WITH THE COMMISSIONERS AGREEING TO THIS DIRECTION BY CONSENSUS.

Commissioner Lyle said the supplementals need to be readied, as the FY 04-05 are done, so the finals for FY 05-06 need to be done by April for finalization. Chair Mueller said he is for having them done as soon as possible.

PM Rowe asked when the Commissioners wanted to schedule the discussion for criteria for awarding the one point for overall excellence (Commissioners point). Following discussion, it was decided, by consensus, that discussion will occur in either December or January. Since the holiday schedule will be voted on at the next meeting (November 11), the timing of the discussion will be determined.

Chair Mueller pushed to have the Subcommittee appointed in December. Commissioner Lyle said two sets of information will be required: the issues which have been identified and data needed if Measure P passes.

OTHER ISSUES: Commissioner Acevedo asked about the Sinaloa Restaurant business: are the owners planning to request an extension? PM Rowe said the information given to the Planning Department is that the owners hope to build a new restaurant at the old location within 2 – 3 years. They ~~have opened~~ *will be opening* at a new location downtown at the present time.

ANNOUNCEMENT: The City Council/Commissions/Board workshop regarding Conflict of Interest and Ethics will be on November 11, beginning at 5:00 p.m. in the Council Chambers, immediately preceding the Planning Commission meeting. The City Attorney will make the presentation.

Chair Mueller reminded PM Rowe that the street standards have not yet been scheduled. [To be presented at the first meeting in December.]

Chair Mueller asked the status of the traffic study workshop. PM Rowe said the traffic consultants, Fehr and Peers, were working on a presentation with the date to be determined.

ADJOURNMENT: With no further business to come before the Commission, the meeting was adjourned at 10:46 p.m.

MINUTES RECORDED AND PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk

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